

**MONTH-TO-MONTH AGREEMENT**  
**Between**  
**Posen Construction, Inc.**  
**A Michigan Corporation, As Tenant**  
**and the**  
**State Of Michigan, As Landlord**

**THIS MONTH-TO-MONTH AGREEMENT** ("Agreement") is entered into by and between Posen Construction Inc., a Michigan Corporation, as ("Tenant"), whose address is 50500 Design Lane, Shelby Township, Michigan 48315 and the Department of Management and Budget, whose address is 530 W. Allegan Street, Lansing, MI 48933, ("Landlord"), and establishes the following terms, conditions, performance obligations, and covenants between the parties.

**WITNESSETH:**

The parties, for the considerations herein mentioned, agree as follows:

1. **DESCRIPTION OF THE PREMISES:** Landlord hereby rents to Tenant approximately 500 square feet of outdoor space as well as motor vehicle ingress/egress thereto during Landlord's business hours by Tenant and its employees on the Michigan State Fairgrounds located at 1120 West State Fair Avenue, Detroit, Michigan (the "Premises") as further illustrated described in Attachment A to this Agreement. The Premises are to be used by the Tenant exclusively for the purposes of storing and maintaining Tenant's stockpile of gravel and similar materials which are sited on the Premises at the start of this Agreement and which Tenant may draw down and from, but not add to. By the end of this Agreement Tenant is to have all of its gravel and similar material and other of Tenant's property removed completely from the Premises.
2. **TERM:** The term of this Agreement is month-to month beginning October 1, 2009 and ending September 30, 2010, subject to the cancellation provisions of this Agreement.
3. **RENT:** Tenant shall pay to Landlord rent at the rate of Five Hundred Dollars and .00/100 Cents (\$500.00) per month. Rent shall be due in advance by the first day of each month this Agreement is in effect, save that rent for the first month shall be due within ten (10) business days of the date this Agreement is executed. Rent shall be made payable to the "State of Michigan" and shall be mailed as follows, Attention: Director, Financial Services Division, Michigan Department of Management and Budget, P.O. Box 30026, Lansing, MI 48909, or to such other address as Landlord may from time to time designate.
4. **SERVICES BY THE LANDLORD:** The Landlord shall furnish to the Tenant the following to a usual and customary standard of due diligence: None .
5. **SERVICES AND RESPONSIBILITIES OF THE TENANT:** Tenant shall furnish the following at its own expense:
  - 5.1. Grading and grooming of Tenant's gravel stockpile as needed to maintain the gravel on as compact a space as is practicable and safe.

- 5.2. Compliance with Landlord's security requirements for the State Fairgrounds, including but not limited to, provision of names of Tenant's personnel for which admittance to the Premises is requested in advance and ensuring that Tenant's personnel carry picture I.D.s on their person at all times while on the State Fairgrounds.
6. **ASSIGNMENT AND SUBLETTING:** Tenant shall neither assign nor sublet the Premises without the advance written consent of the Landlord, other than in the normal course of allowing Tenant's employees to park motor vehicles at the Premises for the purposes of loading and removing Tenant's gravel from the Premises.
7. **ALTERATIONS:** No alterations, modifications, or improvements shall be made to the Premises without the written consent of the Landlord. At the expiration of the Agreement, all such alterations, modifications, and improvements to the Premises shall become the property of the Landlord, unless otherwise agreed in writing or the Tenant acquires fee title to the Premises. Landlord shall not unreasonably deny a request from Tenant to have certain of the rented parking spaces painted to indicate they are reserved for handicap parking only.
8. **CODES AND PERMITS:** Tenant shall comply with all applicable codes and obtain any necessary permits in connection with its use of the Premises.
9. **DAMAGE:** Tenant shall be liable for any damage to Premises caused by sole action of the Tenant, Tenant's employees or Tenant's guests or by any casualty insured under the Tenant's insurance policy, less reasonable wear and tear or damage by the elements.
10. **ENVIRONMENTAL:** The Landlord and Tenant mutually agree that they shall not release on, in, or below the Premises any hazardous substance. The Tenant assumes responsibility to the extent provided by law, for a release or threatened release of a hazardous substance by the Tenant. The Landlord shall not indemnify or defend the Tenant if the release or threatened release is caused solely by the Tenant.
11. **INDEMNIFICATION AND LIABILITY INSURANCE:** Tenant hereby expressly agrees to hold harmless, defend, and indemnify the Landlord, its agents and employees, from and against any and all claims, costs, losses, suits, demands, actions, liabilities, damages, causes of actions or judgments which may in any manner be imposed on or incurred by the State, its agents and employees, for any bodily injury, loss of life, and/or damage to property, including the State's agents, employees, and property, resulting from or arising out of Tenant's use of the Premises.

The Tenant shall, at Tenant's expense, during the term of this Agreement, insure the premises with general liability insurance naming the State, its several departments, boards, agencies, commissions, officers, and employees, as an additional insured and which protects against all claims, demands, actions, suits, or causes of action, and judgments, settlements or recoveries, for bodily injury or property damage arising out of a condition of the Premises. The Tenant agrees to maintain minimum policy limits in the amount of \$500,000 per occurrence for property damage and \$1,000,000.00 per occurrence for bodily injury, with a \$2,000,000.00 aggregate. The Tenant shall provide to the State with a certificate of insurance, naming the State, its several departments, boards, agencies, commissions, officers, and employees as an additional insured party, within thirty (30) calendar days following execution and delivery of this Agreement to Tenant. This provision shall not apply to liability for damages arising out of bodily injury to any person or damage to property of others resulting from the sole negligence of the State, its several departments, boards, agencies, commissions, officers and employees. The policy insurance shall provide that it may not be modified, cancelled, or allowed to expire without thirty (30) days prior written notice given to the State or the additional insured.

12. **NON-DISCRIMINATION:** Tenant shall comply with the Elliott-Larsen Civil Rights Act, 1976 PA 453, as amended, MCL 37.2101 et seq. the Persons with Disabilities Civil Rights Act, 1976 PA 220, as amended, MCL 37.1101 et seq., and all other federal, state and local fair employment practices and equal opportunity laws and covenants that it shall not discriminate against any employee or applicant for employment, to be employed in the performance of this real estate contract, with respect to his or her hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of his or her race, religion, color, national origin, age, sex, height, weight, marital status, or physical or mental disability that is unrelated to the individual's ability to perform the duties of a particular job or position. The Tenant agrees to include in every subcontract entered into for the performance of this real estate contract this covenant not to discriminate in employment. A breach of this covenant is a material breach of this real estate contract.
13. **CANCELLATION RIGHTS:** This Agreement may be cancelled by the Tenant or the Landlord upon thirty (30) days written notice to the other party delivered either in person or by certified mail, return receipt requested, to the other party's address as set forth under the "Notices" Section of this Agreement or to such other address as either party may designate, from time to time, in writing for the delivery of notices under this Agreement. The following contingency provisions may also apply:
- 13.1. If at any time the Tenant vacates the Premises prior to the expiration of the Agreement, the Tenant will be responsible for all rental payments, repairs above and beyond normal wear and tear, until and including the date of the Agreement cancellation.
- 13.2. If this Agreement shall be canceled pursuant to the provisions of this Section, Tenant shall surrender possession of the Premises within forty-five (45) days of the date of cancellation. Upon cancellation of this Agreement as provided in this Section, Tenant shall surrender possession of the Premises in the same condition as when delivered to the Tenant, reasonable wear and tear excepted.
- 13.3. This Agreement may be cancelled by the Landlord provided the Tenant is notified in writing at least thirty (30) days prior to the effective date of cancellation and any one of the following occur:
- 13.3.1. The Tenant or any subcontractor, manufacturer or supplier of the Tenant appears in the register compiled by the Michigan Department of Consumer and Industry Services (or its successors) pursuant to 1980 PA 278, as amended, MCL 423.321 et seq. (Employers Engaging in Unfair Labor Practices Act).
- 13.3.2. The Tenant or any subcontractor, manufacturer or supplier of the Tenant is found guilty of discrimination, pursuant to 1976 PA 453, as amended, MCL 37.2101 et seq. (Elliott-Larsen Civil Rights Act); or 1976 PA 220, as amended, MCL 37.1101 et seq. (Persons with Disabilities Civil Rights Act).
- 13.3.3. The Tenant's use of the Premises is in violation of local adopted ordinance, or recorded deed restrictions, or Landlord determines that Tenant is not using the Premises for the purposes allowed and provided in Section 1.
- 13.3.4. The Tenant fails to repair or restore the Premises for damage specified in Section 9.

14. **QUIET ENJOYMENT:** Tenant, upon payment of the aforementioned rent and the performance of the conditions outlined herein may peacefully and quietly have, hold, and enjoy the Premises - providing Tenant's use of the Premises shall at no time interfere with the Operations of the Landlord in the same and adjacent facilities belonging to the Landlord. Landlord may access the Premises as needed to perform its responsibilities under this Agreement and to make reasonable inspections of Landlord's property.
15. **NOTICES:** Any notice due the Landlord shall be complete if submitted in writing and transmitted by certified or registered mail return receipt requested. Unless changed by the Landlord, notices shall be transmitted to:

Director  
Real Estate Division  
Michigan Department of Management and Budget  
P.O. Box 30026  
530 West Allegan Street  
Lansing, Michigan 48909

Any notice due the Tenant shall be complete if submitted in writing and transmitted by certified or registered mail return receipt requested. Unless changed by the Tenant, notices shall be transmitted to:

Business Manager  
Posen Construction Inc.  
50500 Design Lane  
Shelby Township, Michigan 48315

Notices either issued or received shall be deemed effective as of 12:00 noon Lansing, Michigan time on the third business day following the date of mailing. Business day is defined as any day other than a Saturday, Sunday, legal holiday, or day preceding a legal holiday. A receipt from a U.S. Postal Service, or successor agency, performing such function shall be conclusive evidence of the date of mailing.

16. **MISCELLANEOUS PROVISIONS:**

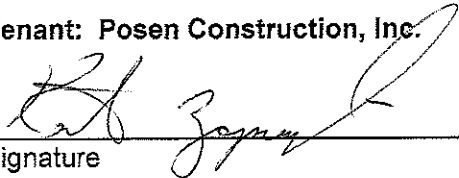
- 16.1. **GOVERNING LAW:** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Michigan.
- 16.2. **MUTUAL DRAFTING:** The Agreement shall be interpreted and construed as drafted mutually by all parties.
- 16.3. **ENTIRE AGREEMENT AND ENCLOSURES:** This Agreement, with all Attachments as listed herein, constitutes the entire agreement between the parties with regard to this transaction and may be amended only in writing.
- 16.4. **SEVERABILITY:** Should any provision of this Agreement or any addenda thereto be found to be illegal or otherwise unenforceable by a court of law, such provision shall be severed from the remainder of the Agreement, and such action shall not affect the enforceability of the remaining provisions of the Agreement.
- 16.5. **WAIVER:** Failure to enforce any term of this Agreement shall not be deemed a waiver of the enforcement of that or any other term of this Agreement.

- 16.6. **EFFECTIVE DATE:** The effective date of this Agreement shall be the date of the last signature executing this Agreement.
- 16.7. **BINDING EFFECT:** This Agreement shall be binding upon and to the benefit of the heirs, executors, administrators and assigns of the Landlord and Tenant.
- 16.8. **REQUIRED APPROVALS:** This Agreement shall not be binding or effective on either party until approved by the Landlord and the Tenant.

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IN WITNESS WHEREOF, the parties to this Agreement subscribe their names on the date set forth below.

**Tenant: Posen Construction, Inc.**

 Date: 10-12-09  
Signature

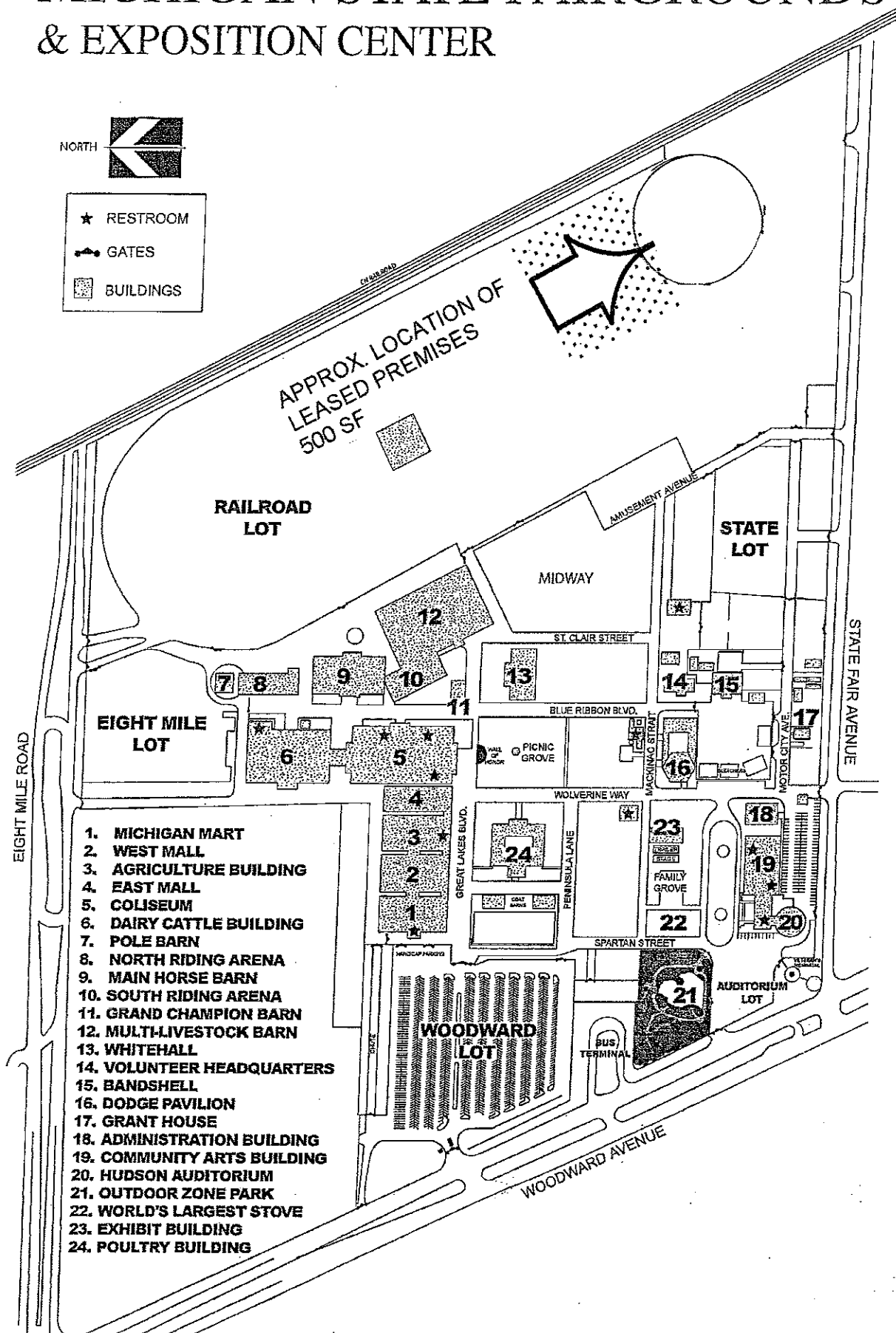
Print Name: Kenneth ZAPCZYNSKI  
Title: EXECUTIVE VICE PRESIDENT

**Landlord: Department of Management and Budget**

 Date: 10/15/09  
Signature

Terri L. Fitzpatrick  
Director, Real Estate Division

# MICHIGAN STATE FAIRGROUNDS & EXPOSITION CENTER



ATTACHMENT A TO MONTH-TO-MONTH AGREEMENT BETWEEN  
POSEN CONSTRUCTION, INC. AS TENANT AND THE MICHIGAN  
DEPARTMENT OF MANAGEMENT AND BUDGET AT 11200 WEST  
STATE FAIR AVENUE, DETROIT, MI.